

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MAX RUHLMAN, et al.,  
 Plaintiff(s),

vs.

GLENN RUDOLFKSY, et al.,  
 Defendant(s).

Case No. 2:14-cv-00879-RFB-NJK  
 ORDER  
 (Docket No. 153)

Pending before the Court is Defendants' motion to disqualify John Brebbia as counsel for Plaintiffs. Docket No. 153. Plaintiffs filed a response in opposition, Docket No. 156, and Defendants filed a reply, Docket No. 161. The Court finds the motion properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion is **GRANTED** to the extent it relates to disqualification only, and is otherwise **DENIED**.

Defendants argue that attorney John Brebbia must be disqualified as counsel. That request is founded on two different provisions of the Nevada Rules of Professional Conduct. First, Defendants argue that disqualification is required under Rule 3.7, which prohibits necessary witnesses from acting as trial counsel. Docket No. 153 at 5-8. Second, Defendants argue that disqualification is required under Rule 1.9(a), which prohibits a lawyer who formerly represented a client from representing an adverse client in a substantially related matter. Docket No. 153 at 8-10.

Plaintiffs failed to oppose in any fashion the argument that Mr. Brebbia must be disqualified under Rule 1.9(a) as having a conflict of interest. The Court takes that silence as acquiescence that

1 disqualification is required under Rule 1.9(a). *See* Local Rule 7-2(d); *see also* *Newdow v. Congress of*  
2 *the United States of America*, 435 F. Supp. 2d 1066, 1070 n.5 (E.D. Cal. 2006), *aff'd sub nom.*, *Newdow*  
3 *v. Lefevre*, 598 F.3d 638 (9th Cir. 2010). Accordingly, the motion is **GRANTED** in that Mr. Brebbia  
4 is found to have a disqualifying conflict pursuant to Rule 1.9(a).<sup>1</sup>

5 The motion continues on to argue that disqualification of Mr. Brebbia should result in an order  
6 requiring his deposition. *See* Docket No. 153 at 10-12. The Court declines to address that issue because  
7 it is not properly before the Court and, indeed, Mr. Brebbia's deposition has not been noticed or  
8 subpoenaed at this time. *See* Docket No. 156 at 5-6. To the extent Defendants seek Mr. Brebbia's  
9 deposition, they must follow the applicable procedures (1) requesting that deposition and, (2) to the  
10 extent a dispute arises following such a request, filing an appropriate discovery motion after conducting  
11 the required pre-filing conference (or, alternatively, responding to a motion for protective order).  
12 Accordingly, the motion is **DENIED** to the extent it relates to the prospective deposition of Mr. Brebbia.

13 **IT IS SO ORDERED.**

14 DATED: February 8, 2017

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17 NANCY J. KOPPE  
18 United States Magistrate Judge  
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28 <sup>1</sup> The Court expresses no opinion with respect to Rule 3.7, which Plaintiffs do address in their  
opposition brief.